Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

LANCE DAWSON,

Petitioner,

v.

THOMAS NEWMAN, JR., Madison County Superior Court Judge, in his individual capacity,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

March 6, 2006

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QUESTIONS PRESENTED

I. Whether the expansive interpretation of judicial immunity by the Seventh Circuit Court of Appeals is contrary to the functional approach required under *Forrester v. White*, 484 U.S. 219 (1988).

II. Whether judicial immunity should include as a "judicial act" the mailing of a trial court's order directing the release of an incarcerated inmate.

LIST OF PARTIES

The parties to the prior proceeding consist of Petitioner Lance Dawson, Respondent Judge Thomas Newman, Jr., and Defendants Arthur Hegewald, Betty Weist, Victoria Fafata, and Kathy Stoops-Wright. Because Petitioner, as detailed *infra*, only seeks to review the Seventh Circuit Court of Appeals' judgment as to Respondent, the remaining defendants are not parties to this petition for a writ of *certiorari*.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	20

TABLE OF AUTHORITIES

Page

UNITED STATES SUPREME COURT CASES:

Antoine v. Byers & Anderson, Inc., 508 U.S. 429 (1993) 8, 9, 10, 13, 15

Bradley v. Fisher, 30 U.S. 335 (1872) 8, 17

Burns v. Reed, 500 U.S. 478 (1991) 9, 13, 15

Ex Parte Virginia, 100 U.S. 349 (1978) 9

Forrester v. White, 484 U.S. 219 (1988) ..... *passim*

Mireles v. Waco, 502 U.S. 9 (1991) 8, 11, 17

Pierson v. Ray, 386 U.S. 547 (1967) 8, 17

Stump v. Sparkman, 435 U.S. 349 (1978) 9, 17

Sutton v. United Airlines, Inc., 527 U.S. 471 (1999) 2

Virginia v. Consumers Union of United States, Inc., 446 U.S. 719 (1980) 11

CIRCUIT COURTS OF APPEALS CASES:

Dawson v. Newman, 419 F.3d 656 (7th Cir. 2005) 10, 11, 16

Lowe v. Letsinger, 772 F.2d 308 (7th Cir. 1985) 16

STATUTORY PROVISIONS:

42 U.S.C. § 1983 ..... 1, 5

Ind. Code § 35-38-1-16 ..... 1, 2, 14, 15

OTHER AUTHORITIES:

63C Am. Jur. 2d *Public Officers* § 325 (2005) 14

Restatement (Second) of Torts § 895D, comment h 14

The Petitioner Lance Dawson respectfully prays that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled proceeding on August 18, 2005, with petition for rehearing and rehearing *en banc* denied December 6, 2005.

OPINIONS BELOW

The opinion of the Seventh Circuit Court of Appeals is reported at 419 F.3d 656 and is reprinted in the appendix hereto, p. A1 ("App. A1"), *infra*.

JURISDICTION

The panel decision of the Seventh Circuit Court of Appeals was entered on August 18, 2005. The decision of the Court of Appeals denying Petitioner's petition for rehearing and rehearing *en banc* was entered on December 6, 2005. This Court has jurisdiction to review the judgment of the Seventh Circuit under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The text of 42 U.S.C. § 1983 and relevant Indiana Code provision § 35-38-1-16 are reproduced verbatim in the appendix, App. A25, *infra*.

STATEMENT OF THE CASE

Judge Newman failed to provide notice to the department of correction of his order calling for Lance Dawson's release, as required by Ind. Code § 35-38-1-16. The relevant facts of this case are contained in Petitioner's Second Amended Complaint (App. A26, *infra*), and must be accepted as true for purposes of review by this Court. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 475 (1999).

This case began in 1990 when Lance Dawson pleaded guilty to certain criminal charges. He was thereafter sentenced to six years, all of which were suspended, and was placed on three years probation. In September of 1992, Dawson's probation officer filed a notice of probation violation with the court alleging that Dawson failed to comply with the terms of his probation. After several delays, on June 12, 2000, approximately ten years after being sentenced, the State filed an amended notice of probation violation, alleging that Dawson's probationary period had been tolled by the 1992 filing of the notice of probation violation. The amended notice further alleged probation violations that occurred in November 1998 and in May 2000. App. A30 (Second Amended Complaint, ¶¶ 16-18).

In a hearing held on October 23, 2000, Respondent Madison County Superior Court Judge Thomas Newman Jr., revoked Dawson's probation and sentenced Dawson to six (6) years. Dawson filed a notice of appeal and was assigned a public defender to represent him on the appeal. Beyond the public defender's initial contact to inform Dawson that he now had appointed counsel for his appeal, Dawson never spoke to his public defender. App. A30-31 (Second Amended Complaint, ¶¶ 19-23).

On Ju 18, 2001, the Indiana Court of Appeals unanimously held in *Dawson v. State*, 751 N.E.2d 812 (Ind. Ct. App. 2001) that the trial court improperly revoked Dawson's probation and remanded the case to the trial court. A docket entry dated July 18, 2001, by Respondent Judge Newman ordered Dawson released from the Department of Correction ("DOC"). Even though the criminal docket shows that Respondent Newman ordered Dawson's release, he failed to take the necessary administrative steps to ensure Dawson's release from DOC. There is no documentation of any order being sent to the DOC, or to any parties. The Madison County Clerk also did not send the docketed order, despite such a duty, to the parties, or to the DOC to notify the agency that it should release Dawson. App. A31-32 (Second Amended Complaint, ¶¶ 24-30).

There was, however, some communication between the Court and the DOC. The same day the Court of Appeals issued its decision reversing Dawson's probation revocation, and the same day Respondent ordered Dawson released, Respondent's court sent a fax to the DOC which included the appellate decision. Thereafter, emails were sent between DOC employees indicating that Dawson was going to be released after his successful appeal. App. A32 (Second Amended Complaint, ¶¶ 31-33).

On July 26, 2001, Dawson was transferred back to DOC's Plainfield, IN facility from a Kentucky prison, to which he was sent due to jail overcrowding in Indiana. The inter-facility transfer report indicates that Dawson was being transferred back to Indiana because of "Possible Release on Appeal." Thus, the DOC had notice that Dawson was to be released immediately based upon the July 18, 2001 decision of the Indiana Court of Appeals.

Believing that his appeal was still pending, and having not been informed of the Court of Appeals' decision, Dawson never questioned his incarceration. Despite the Indiana Court of Appeals' ruling and Respondent Judge Newman's order, Dawson remained incarcerated up to and including September 6, 2002 – over a year after his ordered release. App. A32 (Second Amended Complaint, ¶¶ 34-38).

Upon his release, Dawson reported to the parole office in Anderson, Indiana, as directed by the DOC, and specifically spoke with Betty Weist, his parole supervisor. Petitioner informed her soon after his first visit that the Court of Appeals had ordered his release in 2001. Weist then contacted the court staff of Respondent Judge Newman to inform them of this decision, but she received no further instructions from the court with regard to her responsibility and duties to supervise Dawson under the standard conditions of parole. She also asked for directions from her supervisor, Victoria Fafata, and was told to continue with parole supervision. Petitioner Dawson was unable to persuade Weist that he was not to be supervised on parole, and that the Madison County Superior Court should have taken corrective steps to insure that he should not have been incarcerated beyond the Court of Appeals' decision of July 18, 2001. App. A33 (Second Amended Complaint, ¶¶ 39-41).

Soon thereafter, Petitioner's counsel, Michael K. Sutherlin, contacted Weist and her supervisor, Fafata, to learn more about the circumstances of Dawson's illegal and unlawful imprisonment, and the reasons why he was still under DOC supervision. After initially providing some general information, Weist refused to cooperate without permission and authority from her supervisors. When the office of Plaintiff's counsel contacted Fafata, she refused

to meet with Plaintiff's counsel to provide additional information and referred the matter to her supervisor, Arthur Hegewald. On or about September 10, 2003, Hegewald finally returned several phone messages and indicated that he was not going to meet with Petitioner's counsel, and that it did not matter because Dawson's parole would terminate in the near future anyway. App. A33-34 (Second Amended Complaint, ¶¶ 42-46).

Petitioner Lance Dawson filed his second amended complaint in this matter on April 8, 2004 in the United States District Court for the Southern District of Indiana, alleging violations of his federal and state constitutional rights. Petitioner's federal claims were brought pursuant to 42 U.S.C. § 1983. The district court had jurisdiction over these federal claims pursuant to 28 U.S.C. § 1331 and 1343(a)(3), as Petitioner's suit sought redress for violations of his federal constitutional rights.

On April 30, 2004, Respondent Newman and other defendants (who are not parties to this petition for *certiorari*) filed their motion to dismiss Petitioner's second amended complaint.[1]

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[1] Petitioner sued a total of seven (7) defendants. These defendants were Respondent Thomas Newman, Jr. (in his individual capacity); Parole Officers Arthur Hegewald, Betty Weist, and Victoria Fafata (in their individual capacities); the State of Indiana; the Indiana Department of Correction; and Kathy Stoops-Wright, Clerk of Madison County (in her individual capacity). The motion to dismiss was filed by all of the "State" defendants, which were all parties represented by the Office of the Indiana Attorney General (*i.e.*, all defendants, except Stoops-Wright). Defendant Stoops-Wright was represented by separate counsel through Madison County and chose to file an answer to Petitioner's second amended complaint on June 2, 2004.

On June 25, 2004, the district court granted the defendants' motion to dismiss Petitioner's second amended complaint. *See* App. A13, *infra*. The district court's order also dismissed Petitioner's claims against Defendant Stoops-Wright, though she had never filed a motion to dismiss and in fact had filed an answer to Petitioner's second amended complaint. Thereafter, on September 3, 2004, Petitioner filed a motion for clarification asking the district court if it had intended to dismiss his claims against all defendants, or just the defendants who actually filed the motion to dismiss. On September 9, 2004, the district court clarified that it intended to dismiss all of Petitioner's federal claims against all defendants. *See* App. A20, *infra*. The district court stated that it had *sua sponte* dismissed Petitioner's claims against the clerk of Madison County. The district court also dismissed Petitioner's claims brought under state law for want of jurisdiction, following the dismissal of the federal claims. Petitioner subsequently re-filed his state law claims in state court. Those state law claims are still pending in the Indiana state court system, and are not a part of this petition.

Petitioner appealed the dismissal of his federal claims against the individually named defendants to the Seventh Circuit Court of Appeals.[2] On August 18, 2005, the Court of Appeals issued an opinion reversing the district court's dismissal of the parole agent defendants and the Madison County clerk, Kathy Stoops-Wright. *See* App. A1, *infra*. The Seventh Circuit held the parole officials were not entitled to absolute judicial immunity. Further, the Court of Appeals held that the district court inappropriately

[2] Petitioner did not bring any federal claims against the State of Indiana or the Indiana Department of Correction.

dismissed the Madison County clerk because she had never filed nor joined in the motion to dismiss. The Seventh Circuit did hold, however, that Respondent Judge Thomas Newman, Jr. was entitled to judicial immunity.

Thereafter, Petitioner Lance Dawson timely filed a petition for rehearing and rehearing *en banc*. Additionally, defendant parole officials Weist, Fafata, and Hegewald filed a petition for panel rehearing. On December 6, 2005, the Seventh Circuit indicated by order that both Petitioner's and the Defendants' petitions were denied. *See* App. A23, *infra*.

Petitioner now timely files his petition for writ of *certiorari* with this Court to review the Seventh Circuit's grant of judicial immunity to Respondent Newman. Petitioner does not challenge the Court of Appeals' judgment as to any other defendant, and seeks to reverse only the judgment of the Court of Appeals as to Respondent Judge Thomas Newman, Jr.

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's decision granting judicial immunity to Respondent Judge Thomas Newman, Jr. extends the doctrine of absolute judicial immunity beyond the limits this Court has previously enunciated. The Court of Appeals' interpretation of judicial immunity conflicts with this Court's precedent, such as *Forrester v. White*, 484 U.S. 219 (1988), which requires the application of a functional test in determining whether an act that causes a constitutional deprivation can be appropriately shielded from liability. Furthermore, the expansive interpretation of judicial immunity by the Seventh Circuit radically